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OLC 79-0155

January 20, 1979

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REFERENCE

MEMORANDUM FOR: Director of Central Intelligence

FROM : Frederick P. Hitz  
Legislative Counsel

SUBJECT : CIA Adoption of Certain Civil Service Reform  
Act Provisions

REFERENCE : Your Handwritten Note of December 1978 (U)

1. Action Requested: Paragraph 4 contains a recommendation. (U)

2. Background: You had earlier stated that you felt, on first glance, that both the Senior Executive Service (SES) and Merit Pay provisions of the Civil Service Reform Act of 1978 (P.L. 95-454) sounded like good propositions. You thereafter queried as to how CIA might get in on them. (IUO)

This office, in coordination with the Office of General Counsel and other interested Agency components, spent many hours during the 95th Congress battling to maintain our excepted status from the Civil Service vis-a-vis the Reform Act. This was done both because we did not want to find ourselves having Civil Service Commission or its successor agency's oversight, and the terms of the legislation offered us little that we either did not already have, were desirous of having, or that you, as Director, could not later adopt in one form or another if this became necessary. (IUO)

It is, I believe, in this last area relating to the adoption of measures from statutes from which we have previously requested exclusion that we must proceed with extreme caution. Although your statutory personnel authorities would allow you to incorporate into the CIA personnel system certain provisions of personnel laws which, in and of themselves, are not applicable to the CIA or Intelligence Community, such a step must be taken in a manner which would serve to allay suspicions, on either the part of Congress or the Administration, that CIA, after fighting vigorously for exemption from a statute, thereafter adopts only those portions of the legislation viewed as being beneficial to the Agency while leaving to others the mandatory

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oversight and like provisions which might not be viewed as being particularly desirable. If such a feeling were to develop on the Hill, our efforts would come under serious Congressional scrutiny when we seek, as is often the case, broad exemption from other legislation. (IUO)

3. Discussion: Adoption of SES Principles. The SES was viewed as being a particularly ominous threat in the context of Civil Service Reform legislation because, besides providing for a corps of Government-wide senior managers, the law also provided for the transferability of those managers from one Federal Agency to another. The theory being that a manager is a manager and one who manages Agriculture can with little difficulty manage Commerce or, more to the point, Intelligence. Also, it was felt by the Administration that centralized control of the allocation and distribution of a Government-wide system of SES positions was essential to the success of Civil Service Reform. Although the bill did contain mechanisms for exception to the transfer provisions, it was determined that, had we been included in SES, we would have had to utilize this exception mechanism in almost every case thus making our inclusion not worthwhile. The Department of State, feeling in like manner, also felt it necessary to gain exception from the SES for the Foreign Service. (IUO)

Although it is my understanding that an outside study group is or will be looking into the various provisions of the new Act, it remains my recommendation as well as that of the Office of General Counsel that adoption of the SES provisions without significant modification would not serve us well. (IUO)

Adoption of Merit Pay Principles. The question of adoption of new pay incentives for senior and junior employees is certainly worth further consideration. (IUO)

As you know, CIA now by choice structures its personnel pay system on that provided in the General Schedule. In your book last week, we advised you of and you commented favorably upon the proposed "Classification and Compensation Act of 1979" (Book item attached). (IUO)

This bill clearly raises the issue of whether we want to carefully re-examine the current employee classification and pay aspects of our personnel system. In light of the new Civil Service Reform and now the proposed "Classification and Compensation Act," the time might now be right for a re-examination of the aforementioned system. (IUO)

4. Recommendation: That we not pursue the idea of adoption of Senior Executive Service principles and that you recommend to your Office of Personnel and Finance that they, in coordination with my office and that of the General Counsel, examine both the desirability and feasibility of restructuring our current pay system in light of the Merit Pay Principles of the Civil Service legislation and the newly proposed "Classification and Compensation Act of 1979." (IUO)



Frederick P. Hitz

Attachment

SECRET

LEGISLATIVE HIGHLIGHT BOOK  
FOR THE WEEK OF 1 - 5 JANUARY 1979

ST  
2 JAN 1979

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LEGISLATION:

"Classification and Compensation Act of 1979": ☐

ST

AT We have received from the Office of Management and Budget a draft bill proposed by the Civil Service Commission which would significantly change the present General Schedule compensation system. The bill would eliminate the General Schedule and replace it with a Clerical and Technical Service and a Professional and Administrative Service, a move designed to lessen the variation between Federal and Non-Federal sector pay rates for similar kinds of work. ☐

The CIA is specifically excluded from the present classification Act [5 U.S.C. 5102(a)(1)], and the draft legislation does not purport to include us in the new compensation system. Our Agency has chosen to structure its pay system according to the General Schedule system, however, and the draft bill, which is a key component of the Administration's Civil Service reform program, is thus of considerable importance. We may wish to consider whether it would be advisable for the Agency to adhere to the proposed new system if it becomes law, or whether the Agency should explore the feasibility of establishing its own compensation system. ☐

ST

The bill has been sent to appropriate offices for study and comment.

*New system  
sounds good*